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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
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12 ANTONIO ORTIZ,

13 Plaintiff,

14 vs.

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16 WELLS FARGO BANK, N.A., et al. ,

17 Defendants.
18

CASE NO. 13cv0060-GPC-BLM

**ORDER REMANDING CASE
TO STATE COURT AND
DENYING AS MOOT
DEFENDANT'S MOTION TO
DISMISS**

[ECF NOs. 3,4]

19 On November 29, 2012, Plaintiff filed a complaint in San Diego Superior Court
20 regarding the foreclosure of their home against Wells Fargo Bank and Cal Western
21 Reconveyance. Plaintiff asserted three causes of action under California law:
22 negligence, negligent interference with prospective economic advantage, and violation
23 of the business and professions code section 17200. ECF No. 1, Exhibit A. On January
24 9, 2013, Defendant Wells Fargo removed the action to federal district court asserting
25 diversity jurisdiction. ECF No. 1. January 16, 2013, Defendants filed a motion to
26 dismiss. ECF No. 3. On September 18, 2012, Plaintiff filed a motion to remand the
27 case to state court. ECF 4. Based on the reasoning below, the Court **GRANTS**
28 Plaintiff's motion to remand the case to state court and **DISMISSES** Defendant's

1 motion to dismiss as moot.

2 DISCUSSION

3 “Except as otherwise expressly provided by Act of Congress, any civil action
4 brought in a State court of which the district courts of the United States have
5 original jurisdiction, may be removed by the defendant or the defendants, to the
6 district court of the United States for the district and division embracing the place
7 where such action is pending.” 28 U.S.C. § 1441(a). “District courts...have original
8 jurisdiction of all civil actions where the matter in controversy exceeds the sum or
9 value of \$75,000" and where all parties to the action are “citizens of different
10 states.” 28 U.S.C. § 1332(a). “If at any time before final judgment, it appears that
11 the district court lacks subject matter jurisdiction, the case shall be remanded.” 28
12 U.S.C. § 1447(c). The Ninth Circuit “strictly construe[s] the removal statute against
13 removal jurisdiction.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.1992)
14 (citations omitted). Thus, “[f]ederal jurisdiction must be rejected if there is any
15 doubt as to the right of removal in the first instance.” Id. (citation omitted). “The
16 ‘strong presumption’ against removal jurisdiction means that the defendant always
17 has the burden of establishing that removal is proper.” Id.; *see also* Abrego Abrego
18 v. Dow Chemical Co., 443 F.3d 676, 685 (9th Cir.2006). Removal jurisdiction may
19 be based on diversity of citizenship or on the existence of a federal question. 28
20 U.S.C. § 1441.

21 This case arises from the alleged wrongful foreclosure of Plaintiff’s home.
22 Defendant Wells Fargo Bank, N.A., removed the action on the basis of diversity
23 jurisdiction. For complete diversity to be present, all plaintiffs must have
24 citizenship different from all defendants. *See* Caterpillar Inc. V. Lewis, 519 U.S.
25 61, 68 n.3 (1996). It is undisputed that Plaintiff is a citizen of California. It is also
26 undisputed that Defendant Wells Fargo Bank, N.A. has its main office in South
27 Dakota, and therefore is a citizen of that state. *See* Wachovia Bank v. Schmidt, 546
28 U.S. 303, 307 (2006) (holding that a national bank “is a citizen of the State in which

1 its main office, as set forth in its articles of association, is located”). Plaintiff does
 2 not contest that Wells Fargo Bank is a citizen of South Dakota. In the motion to
 3 remand, Plaintiff contends that both Plaintiff and Defendant are citizens of
 4 California and therefore Defendant improperly removed the case on the basis of
 5 diversity of citizenship. ECF No. 4 at 4. As such, Plaintiff seeks remand to state
 6 court due to lack of subject matter jurisdiction. *Id.* Neither Plaintiff nor Defendant
 7 contest the amount in controversy, which exceeds \$75,000.

8 The question before the Court is whether, for the purposes of diversity
 9 jurisdiction, Wells Fargo is *also* a citizen of California.¹ See, e.g., Uriarte v. Wells
 10 Fargo Bank, N.A., 2011 U.S. Dist. LEXIS 127497 at *9 (S.D. Cal. Nov. 3, 2011)
 11 (holding that Wells Fargo is also a citizen of California, where it has its principal
 12 place of business). *But see* Flores v. Wells Fargo Bank, N.A. 2012 US. Dist. LEXIS
 13 32648 (N.D. Cal. March 12, 2012) (finding that Wells Fargo is only a citizen of the
 14 state of their main office, South Dakota, and not also of the state of their principal
 15 place of business, California.) “All national banking associations shall, for the
 16 purposes of all other actions by or against them, be deemed citizens of the States in
 17 which they are respectively located.” 28 U.S.C. § 1348. While the Supreme Court
 18 held in Schmidt that a national bank is a citizen of the state in which its main office
 19 is located, it did not answer the question as to whether a bank is also “located” in,
 20 and therefore a citizen of, the state of principal place of business. Schmidt, 546 U.S.
 21 303, 307 (2006). The Court addresses that question here.

22 Defendant Wells Fargo asks this Court to adopt a narrow interpretation of the
 23 Supreme Court decision in Wachovia Bank, N.A. v. Schmidt, and find that a
 24 national banking association is a citizen *only* of the state in which it has designated
 25 its main office. Schmidt, 546 U.S. 303, 307 (2006). Wells Fargo relies on the
 26 Eighth Circuit decision in Wells Fargo Bank, N.A. v. WMR e-PIN, LLC and other
 27

28 ¹ Wells Fargo does not contest that its principal place of business is in San Francisco, California.

1 district court opinions which reject the principal place of business test for purposes
2 of diversity jurisdiction in §1348. Defendant further asserts that American Surety, a
3 Ninth Circuit decision that utilized the principal place of business test to interpret §
4 1348, is no longer good law and has been held to be inconsistent with the Supreme
5 Court decision in Schmidt. See American Surety Co. v. Bank of California, 133 F.2d
6 160, 162 (9th Cir.1943). Defendant also attacks previous First and Fifth Circuit
7 decisions that have held the principal place of business test may be applied to
8 national banks. Horton v. Bank One, N.A., 387 F.3d 426, 436 (5th Cir.2004);
9 Firststar Bank, N.A. v. Faul, 253 F.3d 982, 994 (7th Cir.2001).

10 In its motion to remand, Plaintiff contests removal based on lack of diversity
11 of citizenship. Plaintiff asserts that Defendant Wells Fargo is also a citizen of
12 California because the Supreme Court in Schmidt declined to hold that a national
13 banking association's citizenship is limited to the state in which its main office is
14 located. ECF No. 4 at 5. As Defendant Wells Fargo's principal place of business is
15 in San Francisco, California, Plaintiff contends that diversity of citizenship is
16 destroyed, and the Court lacks subject matter jurisdiction. Id.

17 The Supreme Court analysis in Schmidt rejected an approach that would
18 consider a national banking association a citizen of every state in which it maintains
19 a branch. Schmidt, 546 U.S. 307 (2006). Rather, for the purposes of § 1348, a
20 "national bank...is a citizen of the State in which its main office, as set forth in its
21 articles of association, is located." Id. The Supreme Court recognized the
22 controlling context of the word "located" in § 1348 as having "no enduring
23 rigidity." Id. at 314 (quoting Citizens & Southern Nat. Bank v. Bougas, 434 U.S. 35
24 (1977)). In reaching its' decision, the Court refused to address the question of
25 whether principal place of business applied to § 1348. Id. at 315 n.8 ("Other
26 readings mentioned in Court of Appeals opinions are the bank's principal place of
27 business and the place listed in the bank's organization certificate. Because this
28 issue is not presented by the parties or necessary to today's decision, we express no

opinion on it”). Furthermore, the Court contemplated the idea that to reconcile 28 U.S.C. § 1348, governing national banks, and 28 U.S.C. § 1332 (c)(1), governing corporations, that a national bank might have to be considered a citizen of the state in which its main office is located *and* the state of its principal place of business. *Id.* at 317 n.9 (“To achieve complete parity with state banks and other state-incorporated entities, a national banking association would have to be deemed a citizen of both the State of its main office and the state of its principal place of business.” (citations omitted)).

As the Supreme Court did not determine whether a national bank could also be a citizen where it has its principal place of business, the appellate and district courts have taken two different approaches on the issue. On one hand, the Eighth Circuit and other district courts have held that “located” should be read narrowly to only include the place where the bank has its’ main office. *See, e.g. Wells Fargo Bank, N.A. v. WMR e-PIN, LLC*, 653 F.3d 702, 710 (8th Cir. Sept. 2, 2011) (“We reject appellants’ claim that Wells Fargo is a citizen of both South Dakota and California...”); *Kasramehr v. Wells Fargo Bank N.A.*, No. CV 11-0551, 2011 U.S. Dist. LEXIS 52930, at *6 (C.D. Cal. May 17, 2011)(concluding that under § 1348, “a national banking association is a citizen of the state of its main office as designated in its articles of association, and not also a citizen of the state of its principal place of business”).² On the other hand, several district courts continue to affirm the decisions made by the Fifth and Seventh Circuits, which concluded that a national bank is a citizen of both the state in which its main office is located and the state of its principal place of business. *See Horton v. Bank One, N.A.*, 387 F.3d 426, 436 (5th Cir. 2004) (“We hold that the definition of ‘located’ is limited to the

²A number of district courts in California have embraced this approach post-*Schmidt*. *See, e.g., Silva v. Wells Fargo Bank N.A.*, 2011 U.S. Dist. LEXIS 64636, 2011 WL 2437514 (C.D. Cal. June 16, 2011); *Tse v. Wells Fargo Bank, N.A.*, 2011 U.S. Dist. LEXIS 6796 (N.D. Cal. Jan. 19, 2011); *Ngoc Nguyen v. Wells Fargo Bank, N.A.*, 749 F. Supp. 2d 1022, 1027-28 (N.D. Cal. 2010); *Cal. ex rel. Bates v. Mortg. Elec. Registration Sys., Inc.*, No., 2010 U.S. Dist. LEXIS 81650 (E.D. Cal. July 21, 2010); *DeLeon v. Wells Fargo Bank, N.A.*, 729 F. Supp. 2d 1119, 1123-24 (N.D. Cal. 2010); *Peralta v. Countrywide Home Loans, Inc.*, 2009 U.S. Dist. LEXIS 112387 (N.D. Cal. Nov. 16, 2009).

1 national bank's principal place of business and the state listed in its organization
 2 certificate and its articles of association"); Firststar Bank, N.A. v. Faul, 253 F.3d 982,
 3 994 (7th Cir. 2001) ("[W]e hold that for purposes of 28 U.S.C. § 1348 a national
 4 bank is 'located' in, and thus a citizen of, the state of its principal place of business
 5 and the state listed in its organization certificate.") Although these decisions were
 6 made prior to Schmidt, numerous district courts have followed this approach,
 7 finding Firststar and Horton persuasive. *See, e.g., Uriarte v. Wells Fargo Bank, N.A.*,
 8 2011 U.S. Dist. LEXIS 127497 (S.D. Cal. Nov. 3, 2011) at *8 ("the Court believes
 9 the approach advanced by the Fifth and Seventh Circuits, as well as by Judge
 10 Murphy's dissent in WMR, is more consistent with § 1348's legislative history and
 11 the Supreme Court's decision in Wachovia v. Schmidt"); Bickoff v. Wells Fargo
 12 Bank, N.A., et al., 2013 U.S. Dist. LEXIS 2293 (S.D. Cal. January 4, 2013) at *14
 13 (finding "a national banking association is a citizen of both a state where it has its
 14 main office and the state of its principal place of business").³ Wells Fargo argues
 15 that the some district court judges have recently reversed their own decisions, and
 16 now hold that the national banks are only citizens of the state in which they have the
 17 main office. (Citing Kasramehr, 2011 U.S. Dist. LEXIS 52930 (C.D. Cal. May 17,
 18 2011); Mireles v. Wells Fargo Bank, N.A., 2012 U.S. Dist. LEXIS 3871 (C.D. Cal.
 19 2012). The Court finds this argument unconvincing. While the Court
 20 acknowledges there remains a split of opinion on the issue, the fact remains that
 21 district courts continue to follow the Horton and Firststar approach articulated by the
 22 Fifth and Seventh Circuit, especially in the Southern District of California where
 23 judges have recently affirmed the finding that a national bank is also a citizen of the

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 25 ³See also Inyang v. Resmae Morg. Corp., 2012 U.S. Dist. LEXIS 181975 (C.D. Cal. Dec. 26,
 26 2012); Haqq-Ali v. Wells Fargo Bank, N.A., 2012 U.S. Dist. LEXIS 124502 (C.D. Cal. Aug. 31,
 27 2012); Brew v. Wells Fargo Bank, N.A., 2012 U.S. Dist. LEXIS 6796 (E.D. Cal. Jan. 19, 2012);
 28 Guinto v. Wells Fargo Bank, 2011 U.S. Dist. LEXIS 114986 (E.D. Cal. Oct. 5, 2011); Stewart v.
Wachovia Mortg. Corp., 2011 U.S. Dist. LEXIS 85822 (C.D. Cal. Aug. 2, 2011); Goodman v. Wells
Fargo Bank, N.A., 2011 U.S. Dist. LEXIS 63165 (C.D. Cal. June 1, 2011); Guterman v. Wachovia
Mortg., 2011 U.S. Dist. LEXIS 74521 (C.D. Cal. Mar. 31, 2011); Saberi v. Wells Fargo Home Mortg.,
 2011 U.S. Dist. LEXIS 5286 (S.D. Cal. Jan. 20, 2011); Mount et al. v. Wells Fargo Bank, N.A., 2008
 U.S. Dist. LEXIS 98193 (C.D. Cal. Nov. 24, 2008).

1 state of its principal place of business. Bickoff, 2013 U.S. Dist. LEXIS 2293; *See*
 2 *also Taheny v. Wells Fargo Bank, N.A.*, 2012 U.S. Dist. LEXIS 47195, at *1 n.1
 3 (E.D. Cal. Apr. 3, 2012) (listing conflicting decisions issued by district courts
 4 within the Ninth Circuit).

5 Wells Fargo's contention that the Ninth Circuit decision in American Surety
 6 is contrary to the Supreme Court decision in Schmidt was most recently addressed
 7 by Judge Karlton in the Eastern District of California. In its motion to remove,
 8 Defendant Wells Fargo Bank argues that "American Surety and Schmidt both held
 9 for single, but different standards for citizenship. Using the principal place of
 10 business test to the exclusion of the main office as American Surety did is simply
 11 irreconcilable with Schmidt." (Dkt. No. 1 at 7.) As explained by Judge Karlton,
 12 American Surety identified a different possibility for citizenship, without excluding
 13 the other possibility as articulated by the Supreme Court in Schmidt, and both
 14 possibilities for citizenship are not in conflict. Taheny v. Wells Fargo Bank, N.A.,
 15 878 F. Supp. 2d 1093, 1100 (E.D. Cal. April 3, 2012); *See also* Guinto v. Wells
 16 Fargo Bank, 2011 U.S. Dist. LEXIS 114986 (E.D. Cal. Oct. 4, 2011)(finding that
 17 American Surety is binding, Ninth Circuit authority holding that a national bank is a
 18 citizen of the state where it has its principal place of business.) This Court agrees
 19 that the Ninth Circuit decision in American Surety remains binding authority.

20 The remainder of Wells Fargo's arguments have been addressed previously
 21 by other district courts, and are otherwise unconvincing.

22 CONCLUSION

23 For the foregoing reasons, the Court finds a national banking association is a
 24 citizen of both the state where it has its main office and the state of its principal
 25 place of business. Accordingly, as applied to this case, Wells Fargo is a citizen of
 26 California. Because complete diversity is lacking the Court hereby **REMANDS** this
 27 action to the San Diego County Superior Court and **DISMISSES** Wells Fargo's
 28 motion to dismiss as moot. The motion hearing set for Friday, April 26, 2013 is

1 hereby **VACATED**.

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3 **DATED: April 19, 2013**

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6 **HON. GONZALO P. CUriEL**
7 **United States District Judge**
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